

To: DC Secretary
Re: Issue Number: 2018101502, *Further Submission Re: Bankruptcy Order and Misconduct By DC Member Cyrus Capital Partners, L.P.*
Date: November 20, 2018

We write on behalf of [REDACTED] in further response to challenges made by Cyrus Capital Partners, L.P. (“Cyrus”) to the deliverability of certain inter-company medium term notes (the “MTNs”) issued by Sears Roebuck Acceptance Corporation (“SRAC”).

The DC has no doubt now been made aware that an order was issued yesterday by the U.S. Bankruptcy Court for the Southern District of New York (the “Order”), granting the motion by certain Sears debtor entities to sell the MTNs in an auction, which is currently scheduled to take place today. The Order contains language indicating that the MTNs “are not being sold free and clear of any Liens or Claims of SRAC....” *See Order ¶¶ 6–7.*

We write to make the DC aware, if it is not already, that this language was inserted into the Order by Cyrus; Cyrus agreed to withdraw its objection to the debtors’ motion to sell the MTNs in exchange for the insertion of this language, which tracks the language of Section 8.12 of the 2014 ISDA Credit Derivatives Definitions nearly word for word. Cyrus obviously intends to use the Order to try and obtain an adverse finding as to deliverability of the MTNs and torpedo the very auction that the Order approved.

Cyrus did not disclose to the debtors that this was its purpose in inserting the language, and, based on comments made to and by the Bankruptcy Court, the debtors apparently agreed to insert the language in part because they did not believe SRAC had any rights of setoff or counterclaims that would be relevant. The debtors have now confirmed this fact in a public statement, which goes even further, stating conclusively that “SRAC is not aware of, and does not intend to pursue, ***and hereby quitclaims*** any counterclaim, defense, lien, claim, charge, encumbrance, or right of setoff with respect to any purchaser or transferee of the Notes.” *See Sears Holding Corporation (18-23538), PRIME CLERK, <https://restructuring.primeclerk.com/sears/> (emphasis added.)*

SRAC’s public statement makes clear that the MTNs that are being auctioned are free and clear of any such claim or right of SRAC, and therefore can be “Delivered” in the SRAC auction in compliance with Section 8.12 of the 2014 ISDA Credit Derivatives Definitions. However, in light of Cyrus’s deceitful effort to manipulate the debtors into including language in the Order that was inconsistent with the actual facts concerning SRAC’s rights in respect of the notes—and was blatantly designed to improperly influence the DC’s determination on deliverability of the MTNs—we believe the DC’s process is in danger of being tainted. In order to ensure the integrity of that process, we request that (1) this letter be shared with the DC members so that they are made aware of all the facts contained herein and (2) Cyrus be recused from deliberations that it has attempted to improperly influence. Both steps are imperative to maintaining market confidence in the DC’s process.

Respectfully Submitted,



Jonathan E. Pickhardt